IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 132 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

GANPATBHIA T PRAJAPATI - Petitioner(s)

Versus

FOOD INSPECTOR &2 - Respondent(s)

==========

Appearance :

MR PM THAKKAR for Petitioner No(s).: 1.

MR MG NAGARKAR for Respondent No(s).: 1.
MR SN SHELAT for Respondent No(s).: 1.
MR NC SOOD,LD.APP for Respondent No(s).: 2.

==========

CORAM :HON'BLE MR.JUSTICE C.K.BUCH

Date : 16/06/2005

ORAL JUDGMENT

1.Heard Mr.Joshi, learned counsel appearing on behalf of Mr.P.M. Thakkar, learned senior counsel for the petitioner.

2.By way of this Revision Application, the petitioner has assailed the legality and validity of the judgment and order dated 21th October, 1992 of conviction and sentence passed by the Metropolitan Magistrate, Court No.6, Ahmedabad, and confirmed by the Additional City Sessions Judge, Ahmedabad, vide judgment and order dated 11th February, 1994, on various grounds mentioned in the memo of the Revision.

3.Mr.Joshi has mainly relied upon the following aspects of the matter :

1.To appreciate the contentions raised by the petitioner, for the sake of brevity and convenience, it would be proper to have a look on the facts of the case placed by the prosecution against the petitioner. According to the prosecution, on 29th November, 1988, a sample of cow milk was drawn by the Food Inspector i.e. complainant of Ahmedabad City and the same was found adulterated/not as per the standards prescribed by the Public Analyst and, therefore, after observing procedural formalities, a complaint was lodged in the Court of Metropolitan Magistrate, Ahmedabad, on 5thOctober, 1989. The Metropolitan Magistrate, Court No.6, after completion of the trial convicted the petitioner for the offence punishable under Sections 7(1) and 16(1)(a) of the Act, and imposed imprisonment for a period of six months and a fine of Rs.1,000/-. Meanwhile i.e. after filing of the prosecution, the petitioner-accused had claimed that the second sample may be sent to Central Food Laboratory (for short 'CFL') for analysis and on analysis, the CFL found that the sample of cow milk analysed by the CFL was not upto the standards. I am told that, according to the CFL, percentage of water was more than the prescribed standards. Obviously, therefore, the sample was lacking adequate percentage of fat. The said judgment and order of conviction was assailed by way of preferring Criminal Appeal bearing No.36 of 1992, before the Additional City Sessions Judge, Ahmedabad and after hearing the parties, the Additional City Sessions Judge upheld the judgment and order of conviction.

2.Mr.Joshi while magnifying the point raised by the petitioner in the Revision Application stated that the sanction to prosecute the petitioner under Section 20 of the Act is not a legal and valid sanction and he has further stated that the sanctioning authority has granted sanctioned mechanically and granted sanction by writing following arguments at the bottom of the complaint filed before the Metropolitan Magistrate :

“**Scrutinised all the papers and sanctioned prosecution.”**

3.It is true that the complainant has said in his deposition that the relevant papers along with the draft complaint were placed before the sanctioning authority and so according to Mr.Sood, this can be said to be a valid sanction. But it is rightly argued by Mr.Joshi that the sanction obviously looks granted mechanically and the same is given without application of mind. This Court and the Apex Court has dealt with this aspect on various occasions and under different lines where statutory legal sanction to prosecute is mandatory. But in one case under the Act itself, this Court considered the identical sanction granted by the Deputy Municipal Commissioner, Ahmedabad Municipal Corporation and for the sake of brevity and convenience, it would be beneficial for the purpose to quote relevant part of the decision of this Court (Coram : Miss R.M. Doshit, J) in Criminal Revision Application No.110 of 1994 decided on 15th/18th September, 2000, which is as under :

"... The only contentions, which according to me, merit consideration are – (1) The consent recorded by the competent authority under section 20(1) of the Act does not disclose application of mind. The consent given without due application of mind would be fatal to the prosecution; and (b) the accused had not been given adequate opportunity to put forth his defence in his examination under section 313 CRPC as regards the nature of adulteration found in the oil sold by him to the Food Inspector.

The consent as envisaged under section 20 of the Act has been recorded beneath the complaint in the following terms :

"Scrutinised all the papers and sanctioned prosecution"

The consent as recorded does not evidence active application of mind. Though no reasons are required to be recorded while granting consent under section 20 of the Act, the prosecution is duty bound to satisfy the Court that the consent had been given after perusal of all the relevant papers and after proper application of mind."

4.Therefore, the application of mind to reflect either in the sanction/consent to prosecute granted by the authority or it must emerge from the evidence led by the prosecution. Two witnesses normally are competent to lead such evidence i.e. Complainant, the person who has applied for such sanction and second, the authority who has accorded such sanction. When the sanctioning authority states that it has scrutinized all the papers then what were those papers, is required to be brought on record. It will be difficult for this Court to presume that 'all the papers' means papers attached with the complaint including the report of the Public Analyst and other procedural papers i.e. intimation sent to the person from whom the

sample is drawn, etc. So it is obligatory in such a situation to prove as to which papers were placed before the Sanctioning Authority with the draft complaint. It is not necessary even to place a draft complaint. But the intention to prosecute should be placed before the Sanctioning Authority, and if possible, mentioning the relevant sections under which the complainant intends to prosecute the proposed accused and the reasons for which he seeks to prosecute the accused. These reasons may be in the format of different papers including report of Public Analyst but all these papers were produced must have been stated by leading oral evidence and bare words that all the papers were placed before the authority would not be held to be sufficient for holding that the authority had applied mind before granting sanction. As observed by this Court in the above cited decision, the sanction to prosecute must have been granted by “active application of mind”. Mechanical grant of sanction cannot be said to be sanction with “active application of mind”.

5. The validity of sanction was not seriously assailed before the Sessions Court but according to Mr.Joshi, this point was very well taken up before the Court of Sessions, however, it was not rightly appreciated by the learned Judge while dealing with the appeal.

6. The second point argued by Mr.Joshi has some strength. In this very cited decision, an ambiguous question was asked to the accused. The only question put to the accused in the cited decision i.e.Shankarlal Jain, was “what he had to say about the report of the Director of Central Food Laboratory ?”. The decision indirectly held that this question can be said to be a vague question and it cannot be said to be adequate liberty to explain qua the findings recorded by the CFL. From the original record, the Court has found that in the present case, no question was asked by the Presiding Judge i.e. ld. Metropolitan Magistrate in this regard and that too keeping the report of the Public Analyst, who had analyzed the first sample. AS per the settled legal position, on receipt of the report from the CFL, the first report automatically goes. The report of first analysis cannot be read or considered for any purpose and the report of the CFL supersedes the first report. So the report for which the accused was held to be guilty, at least the question ought to have been asked by the Metropolitan Magistrate before using that evidence as an incriminating piece of evidence against the petitioner. However, this Court can call the accused petitioner and give this opportunity and record the explanation but the question is of the year 1988 and as the hanging sword of prosecution is there on the head of the petitioner for the last 15 years, the Court is not enter into exercise powers

because on the first point also conviction is found bad for want of appropriate legal sanction.

7. For short, in view of above observations, the present Revision Application is hereby allowed. The judgment and order dated 21st October, 1992 passed by the ld. Metropolitan Magistrate, Court No.6, Ahmedabad, in Criminal Case No.126 of 1989 and confirmed by Additional City Sessions Judge, Ahmedabad, vide its judgment and order dated 11th February, 1994, in Criminal Appeal No.36 of 1992, are hereby quashed and set aside. The petitioner-accused is held guilty of charge and he is ordered to be acquitted of the charges levelled against him in respect of the crime in question. Fine, if any, shall be refunded to the petitioner-accused. Bail bond, if any, stands cancelled.

(C.K. Buch, J)

Aakar